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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 BRIAN TERWILLEGER,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON, et al.,

14 Defendants.

CASE NO. 3:17-cv-05360-RJB-DWC

ORDER REOPENING CASE AND  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

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16 Plaintiff Brian Terwilleger, proceeding *pro se*, filed this civil rights Complaint under 42  
17 U.S.C. § 1983. In July of 2017, the Honorable Robert Bryan dismissed the case without  
18 prejudice because plaintiff had failed to state a claim for which relief could be granted. Dkt. 10.  
19 Plaintiff subsequently filed a Motion to Reopen the Case and Application for Court Appointed  
20 Counsel (“Motion”). Dkt. 11. Having reviewed his Amended Complaint and the Motion, the  
21 Court grants the Motion in part and denies in part.

22 **BACKGROUND**

23 Plaintiff filed this action in May of 2017. Dkt. 1. After Judge Bryan identified several  
24 deficiencies in Plaintiff’s Complaint and Plaintiff failed to remedy them, Judge Bryan dismissed

1 Plaintiff's case without prejudice. Dkt. 10. After filing his Motion (Dkt. 11), Judge Bryan  
2 directed Plaintiff to file an Amended Complaint and referred the case to the undersigned  
3 magistrate judge (Dkt. 12). After extending Plaintiff's time to file several times (Dkts. 17, 25),  
4 Plaintiff successfully filed his Amended Complaint (Dkt. 26). The Court noted that his Amended  
5 Complaint was ready for service, but required a prison trust account statement to evaluate his  
6 Motion for Leave to Proceed *In Forma Pauperis* ("Motion for IFP"). Dkt. 30. Plaintiff has now  
7 provided his prison trust account statement. Dkt. 32

### 8 DISCUSSION

9 As the Court noted in its previous Order, Plaintiff's Amended Complaint has remedied  
10 the deficiencies noted by Judge Bryan and is ready for service upon Defendants. *See* Dkt. 30.  
11 Therefore, Plaintiff's Motion is granted insofar as he requests that his case be reopened. The  
12 Court will file separate Orders granting IFP status and directing service.

13 However, Plaintiff has not demonstrated that he requires appointed counsel at this time.  
14 Appointed counsel in § 1983 cases is only appropriate under "exceptional circumstances." *Rand*  
15 *v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th  
16 Cir. 1998). To decide whether exceptional circumstances exist, the Court must evaluate both "the  
17 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro*  
18 *se* in light of the complexity of the legal issues involved." *Wilborn v. Escalderon*, 789 F.2d 1328,  
19 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Here,  
20 though the case has been reopened, Defendants have not yet been served nor have they had a  
21 chance to respond to Plaintiff's claims. It is far too early in the case to evaluate Plaintiff's  
22 likelihood of success. Further, Plaintiff has followed the Court's instructions, remedied his  
23 deficiencies, and generated an Amended Complaint that adequately articulates his claims.

1 Because of this, Plaintiff has not yet demonstrated the exceptional circumstances required for  
2 appointed counsel. Therefore, the Court denies Plaintiff's Motion without prejudice insofar as he  
3 requests appointed counsel.

4 **CONCLUSION**

5 Plaintiff's Motion (Dkt. 11) is granted insofar as he requests his case be reopened. The  
6 Clerk is directed to reopen Plaintiff's case.

7 Plaintiff's Motion (Dkt. 11) is denied without prejudice insofar as he requests appointed  
8 counsel. Plaintiff may again request counsel at a later date if he can demonstrate the necessary  
9 exceptional circumstances.

10 The Court will grant Plaintiff IFP status and direct service of the Amended Complaint in  
11 separate Orders.

12 Dated this 5th day of January, 2018.

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14 David W. Christel  
15 United States Magistrate Judge  
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